

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200905003**

Release Date: 1/30/2009

Index Number: 9100.00-00, 2642.00-00

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04 – PLR-115345-08

Date:

September 30, 2008

Re:

Legend:

Donor =

Spouse =

Son =

Accountant =

Attorney =

Date 1 =

Date 2 =

Year 1 =

Year 2 =

Year 3 =

Trust =

A =

B =

C =

Dear :

This is in response to a letter dated March 3, 2008, from your authorized representative, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations and § 2642(g) of the Internal Revenue Code to allocate Taxpayers' available GST exemptions to a trust.

Facts

On Date 1, Spouse established Trust, an irrevocable trust, for the benefit of Son and Son's descendants. In Year 1, Spouse transferred \$A in property to Trust and in Year 2 both Donor and Spouse transferred \$B in property to Trust. For Years 1 and 2,

Donor and Spouse filed Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, and elected under § 2513 to treat the gifts as made one-half by each spouse. In Year 3, Donor transferred \$C to Trust. However, Donor's accountant (Accountant), who prepared the Forms 709 failed to properly allocate GST exemption to the transfers attributable to Donor. Donor died on Date 2. An attorney for Son discovered that Donor's GST exemption had not been allocated to Trust. In an affidavit, Attorney, who drafted Trust, states that it was intended that Donor would allocate GST exemption to Trust. In an affidavit, Accountant states that it was intended that Donor would allocate his GST exemption and that the failure to allocate to the Year 1 and Year 2 returns was inadvertent. Donor died on Date 2.

To date, no taxable distributions, taxable terminations, or any other events have occurred with respect to Trust that would give rise to a GST liability on the part of Trust or any of its beneficiaries.

Law and Analysis

Section 2513(a) provides, generally, that, for gift tax purposes, if the parties consent, a gift made by one spouse to any person other than his or her spouse shall, for gift tax purposes, be considered as made one-half by the donor spouse and one-half by his or her spouse.

Section 2601 imposes a tax on every generation-skipping transfer (GST) (within the meaning of subchapter B). A "generation-skipping transfer" is defined under § 2611(a) as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2631(a), as in effect for generation-skipping transfers before January 1, 2004, provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 26.2632-1(b)(4) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime is made on Form 709.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer or is deemed to be made under § 2632(b)(1) or (c)(1) the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)).

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under § 2642(g)(1), the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Section 2652(a)(2) and § 26.2652-1(a)(4) provide that, if, under § 2513, one-half of a gift is treated as made by an individual and one-half is treated as made by the spouse of the individual, then for purposes of the GST tax, each spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor spouse, regardless of the interest the electing spouse is actually deemed to have transferred under § 2513.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Under § 301.9100-3(b)(iv), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Based on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 are satisfied. Therefore, Donor is granted an extension of time of 60 days from the date of this letter to allocate her available GST exemption to Trust with respect to the Years 1, 2, and 3 transfers to Trust. The allocations will be effective as of the respective dates of the transfers to Trust, and will be based on the value of the assets contributed to Trust in Years 1, 2, and 3.

The allocations of Donor's GST exemption should be made on supplemental Forms 709 and filed with the Internal Revenue Service Center in Cincinnati. A copy of this letter should be forwarded to the Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, OH 45999, for association with the Form 709.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

William P. O'Shea
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure

Copy for section 6110 purposes
Copy of this letter

cc: